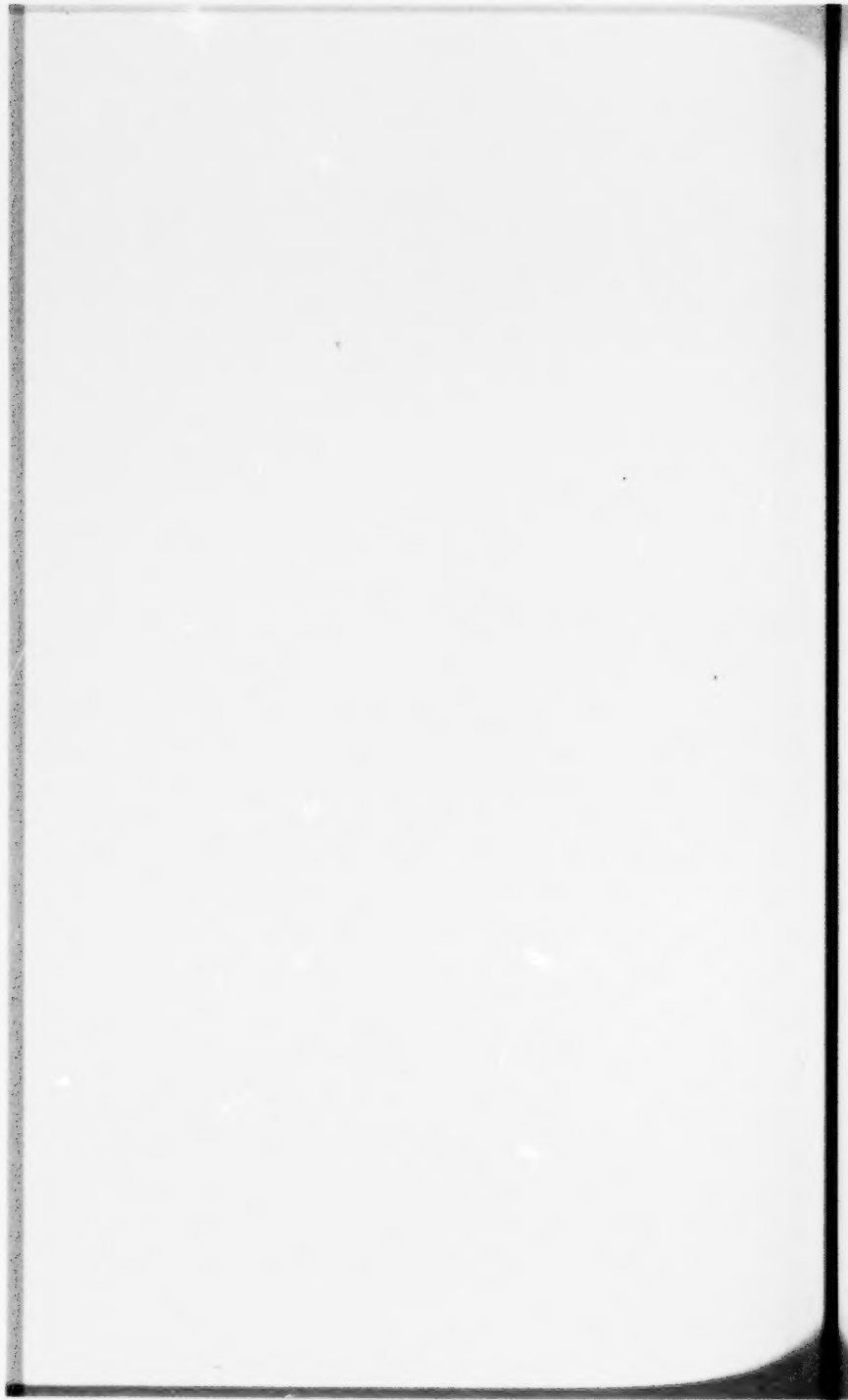


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# In the Supreme Court of the United States

OCTOBER TERM, 1944

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No. —

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

*v.*

ESTATE OF CAROLINE WHITE, DECEASED, WALDRON  
KINTZING POST, JOHN ROSS DELAFIELD AND  
BACHE McE. WHITLOCK, AS EXECUTORS OF THE  
WILL OF CAROLINE WHITE, DECEASED

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND  
CIRCUIT

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The Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit, entered in the above case on September 12, 1944, affirming the decision of the Tax Court of the United States.

## OPINIONS BELOW

The opinions in the Tax Court (I. R. A. 2-11) are reported in 3 T. C. 156. The opinions in the Circuit Court of Appeals (II R. 1675-1680) are not yet reported.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered on September 12, 1944. (II R. 1680-1681.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

### QUESTIONS PRESENTED

1. Whether the bonds of the Triborough Bridge Authority are those of a "state" or a "political subdivision" of a state within the meaning of Section 22 (b) (4) of the Revenue Act of 1938 and the Internal Revenue Code, and the applicable Treasury Regulations, so that the interest received by the holders of the bonds is exempted from the federal income tax.

2. If the obligations are not those of a "state" or a "political subdivision" of a state within the meaning of the statute and regulations, whether there is any constitutional objection to the tax.

### CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The provisions of the Constitution, statutes and regulations are set forth in the Appendix to our petition in *Commissioner v. Estate of Alexander J. Shamburg*, which is being filed simultaneously with the petition herein. Section 22 (a) and (b) (4) of the Internal Revenue Code is the same as Section 22 (a) and (b) (4) of the Revenue Act of 1938, c. 289, 52 Stat. 447, and Section 19.22

(b) (4)-1 of Treasury Regulations 103, promulgated under the Internal Revenue Code, is the same as Article 22 (b) (4)-1 of Treasury Regulations 101, promulgated under the Revenue Act of 1938.

#### STATEMENT

This case involves the income tax liability of Caroline White for the calendar years 1938 and 1939, and presents for determination the question whether interest received by her during those years upon bonds issued by the Triborough Bridge Authority is subject to tax.

The facts may be summarized as follows:

The Triborough Bridge Authority was organized under Chapter 145 of the Laws of New York (1933), to carry out a project for construction of a bridge to connect the Boroughs of Manhattan, Queens and the Bronx. Prior to the organization of the Authority, the City of New York had taken various steps toward the construction of such a bridge, and by 1932 had constructed certain piers and anchorages at a cost of approximately \$2,365,000. These funds were obtained by the City from the sale of tax anticipation notes and long term corporate stock of the city. Work was suspended in May of 1932 because of the financial condition of the city. (I R. A. 3.)

A brief statement of the provisions of the statute creating the Triborough Bridge Authority follows:

Section 1 created the Authority and declared that it "shall be a body corporate and politic constituting a public benefit corporation", consisting of three members to be appointed by the Mayor of New York City, and subject to removal by the Mayor for cause. The Authority is to continue to exist until all of its liabilities have been met, at which time its remaining rights and property are to pass to the city.

Section 3 authorized it to construct, maintain and operate a bridge connecting the three boroughs, and granted all of the incidental powers necessary in order to carry out the project. These included the power to acquire necessary property, in the name of the city, by purchase or condemnation. It was also authorized, with the consent of the city, to use agents, employees, and facilities of the city, but to pay its proper proportion of the compensation or cost.

Section 4 provided that officers and employees of the city might be transferred to the Authority without loss of their rights under any existing pension or retirement system or civil service status.

Section 5 provided that the comptroller of the city should handle the funds of the Authority but should not commingle them with any other funds, and authorized banks and trust companies to give security for deposits of the Authority.

Section 9 authorized the Authority to issue bonds to finance the construction of the project, and Section 11 provided that:

The bonds and other obligations of the authority shall not be a debt of the state of New York or city of New York, and neither the state nor the city shall be liable thereon, nor shall they be payable out of any funds other than those of the authority.

Section 12 made the bonds legal investments for fiduciaries, and Section 13 provided for their exemption from taxation, except for transfer and estate taxes.

By Section 14 the State of New York agreed with the bondholders not to alter the Authority's right to collect the tolls necessary to fulfill the terms of the bonds or in any way to impair the rights and remedies of the bondholders.

Section 15 provided for the transfer from the City of New York's Department of Plant and Structures of all contracts, books, maps, plans, papers, and records pertaining to the project, and Section 16 provided that:

The authority shall be deemed and held to constitute a continuation, as to matters within its jurisdiction, of the department of plant and structures of the city for the purpose of succession to all such of the rights, powers, duties and obligations of the city and of department of plant and

structures of the city as relate to the designing and construction of the project.

The Mayor of New York City appointed the first members of the Authority on April 28, 1933, and they qualified and took office at once. From the time of its organization to the end of 1939, the only activities of the Authority have been the operation of the Triborough Bridge and the Bronx-Whitestone Bridge<sup>1</sup> as toll bridges, and its only revenues have been derived from the tolls collected on these bridges, except income from deposits and invested funds held for the protection of its bonds. (I R. A. 5, 15-16.)

The location and plans for each of the crossings of the Triborough Bridge and for the Bronx-Whitestone Bridge were approved by the Chief of Engineers of the War Department and by the Secretary of War. (I R. A. 22.)

Following the organization of the Authority the city assigned to it, without consideration, some of the land used for its bridges and approaches, the city retaining title; and the engineering force of the Bureau of Plant and Structures engaged in work on the Triborough Bridge, and all records

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<sup>1</sup> The Authority was authorized to build the Bronx-Whitestone Bridge and to issue bonds to finance it, by Chapter 555, Laws of New York (1936). Other projects have since been committed to the jurisdiction of the Authority. See Article 3, Title 3, of the Public Authorities Law, Laws of New York (1939), c. 870 (42 McKinney's Cons. Laws of N. Y., Sec. 550, *et seq.*).



relating to it were transferred to the Authority. (I R. A. 5.)

After its organization in 1933, the Authority applied to the Federal Emergency Administrator of Public Works for a loan and grant from the United States to finance the construction of the Triborough Bridge. The United States made a grant of \$9,200,000 and a loan of \$35,000,000, and work was resumed on December 12, 1933. Under the terms of the loan agreement, the Authority was required to furnish the Government with opinion of bond counsel that the bonds issued thereunder were exempt under the Constitution from all taxation (except estate, inheritance, and gift taxes) by the United States. Such an opinion of bond counsel was furnished to the Government with each installment of bonds issued pursuant to the loan agreement. From time to time the Federal Emergency Administrator of Public Works transferred these bonds to the Reconstruction Finance Corporation. None of these bonds were approved by the electors of the State of New York at an election, and the comptroller of the city has never included them in statements of the indebtedness of the city. (I R. A. 5-6, 17-19.)

On April 27, 1937, the Authority issued \$53,000,000 of bonds in order to refund the \$35,000,000 issue of 1933, then held by the Reconstruction Finance Corporation, and to construct the Bronx-Whitestone Bridge. Pursuant to requirements

imposed by the Reconstruction Finance Corporation, it was furnished with the opinion of bond counsel to the effect that interest on the bonds was exempt from federal and New York State income taxes, and that no federal issue tax was required to be paid on the bonds. (I R. A. 6, 19-20.)

On January 29, 1937, the chairman of the Authority requested a ruling from the Commissioner of Internal Revenue as to whether the interest on bonds issued and to be issued by the Authority would be exempt from federal income taxes. The Commissioner replied by letter dated February 17, 1937, that the income on such bonds was exempt from federal income tax. (I R. A. 19, 26-28.)

The bonds involved in this case were part of the \$53,000,000 issue of 1937 and were acquired on April 29th of that year. (I R. A. 7, 21.)

The Commissioner determined the deficiencies herein at issue by including in taxable income for the years involved, the interest on these bonds.<sup>2</sup> The Tax Court, five judges dissenting and one judge not participating, held that the Authority was a political subdivision of the State of New York within the meaning of Section 22 (b) (4) of the Revenue Act of 1938, and the Internal Revenue Code, and that therefore the interest on its obligations was exempt from tax. (I R. A. 2-11.) The Circuit Court of Appeals, one judge

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<sup>2</sup> Other adjustments made by the Commissioner to the returns for those years were not contested. (II R. 2.)

dissenting, affirmed the Tax Court's decision. (II R. 1675-1680.)

#### **SPECIFICATION OF ERRORS TO BE URGED**

The Circuit Court of Appeals erred:

1. In construing the term "political subdivision" in Section 22 (b) (4) of the Revenue Act of 1938 and the Internal Revenue Code to mean state instrumentalities generally.

2. In construing the requirement of Article 22 (b) (4)-1 of Treasury Regulations 101 and Section 19.22 (b) (4) of Treasury Regulations 103, that a "political subdivision" must possess "the right to exercise part of the sovereign power of the State", and in holding that the Triborough Bridge Authority is a political subdivision of a state within the meaning of the regulations.

3. In construing the term "issued on behalf of a state" in Article 22 (b) (4)-1 of Treasury Regulations 101 and Section 19.22 (b) (4)-1 of Treasury Regulations 103, and in holding that the Triborough Bridge Authority's bonds were issued on behalf of a state within the meaning of the regulations.

4. In holding that interest on bonds of the Triborough Bridge Authority is exempt from tax under Section 22 (a) and (b) (4) of the Revenue Act of 1938 and the Internal Revenue Code.

5. In failing to hold that interest on bonds of the Triborough Bridge Authority is subject to tax under Section 22 (a) and (b) (4) of the Revenue

Act of 1938 and the Internal Revenue Code, and in failing further to hold that there is no constitutional objection to the tax.

6. In affirming the decision of the Tax Court.

#### REASONS FOR GRANTING THE WRIT

This is a companion case to *Commissioner v. Estate of Alexander J. Shamberg*, in which a petition for certiorari is being filed simultaneously with the petition in the instant case. The bonds involved in this case are those of the Triborough Bridge Authority which is one of the 39 similar instrumentalities created by the State of New York to which we have referred in the *Shamberg* petition (pp. 16-17). All of the reasons for granting the writ relied upon in our petition in the *Shamberg* case are equally applicable here, and we make all of the contentions with respect to the question of statutory construction and with respect to the constitutional issues which we make in the *Shamberg* case, except for that part of our position in the *Shamberg* case which turns upon the bi-state nature of the Port of New York Authority and its creation by a compact which required the consent of Congress.

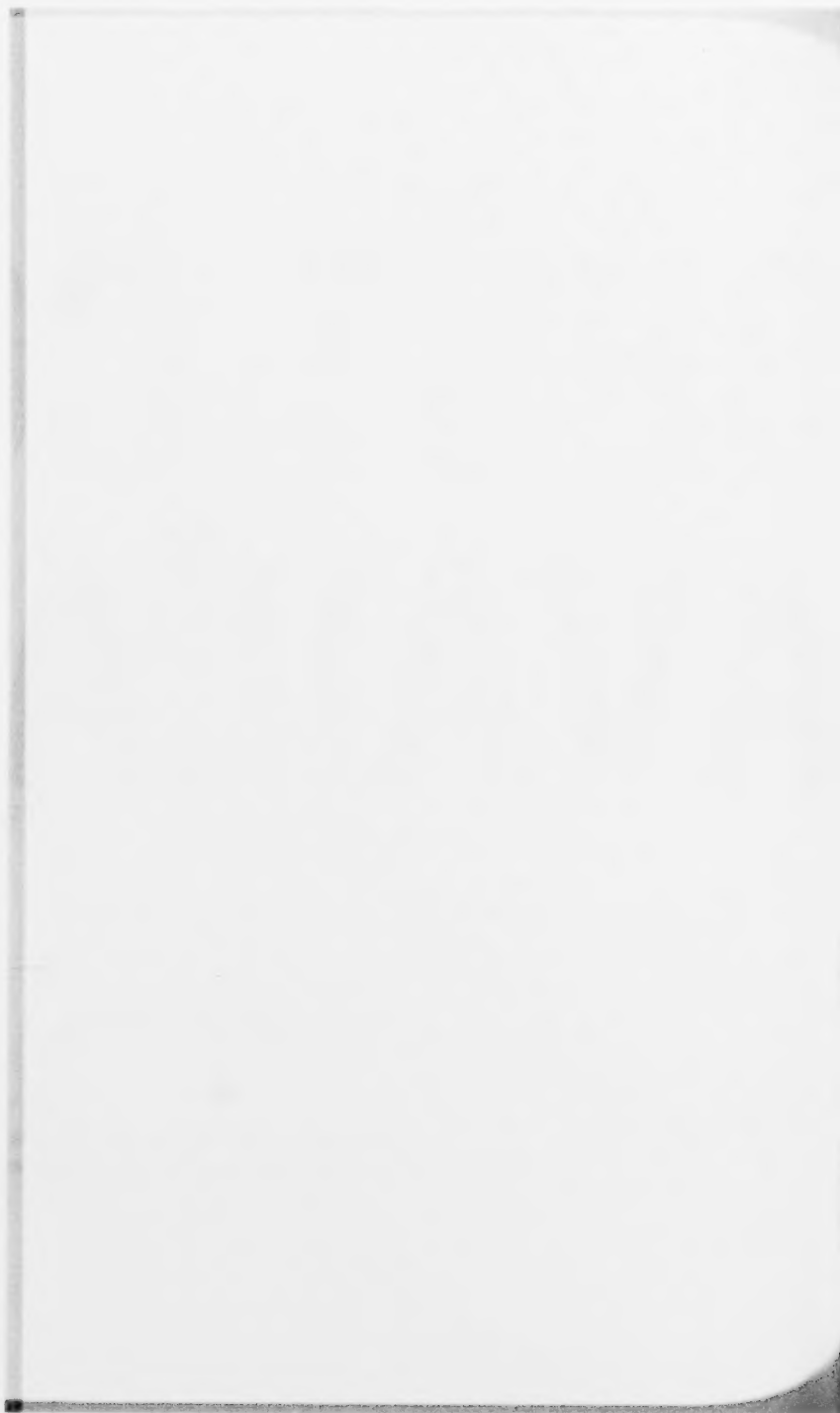
#### CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

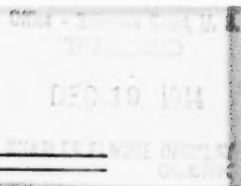
CHARLES FAHY,  
*Solicitor General.*

NOVEMBER, 1944.





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No. 708



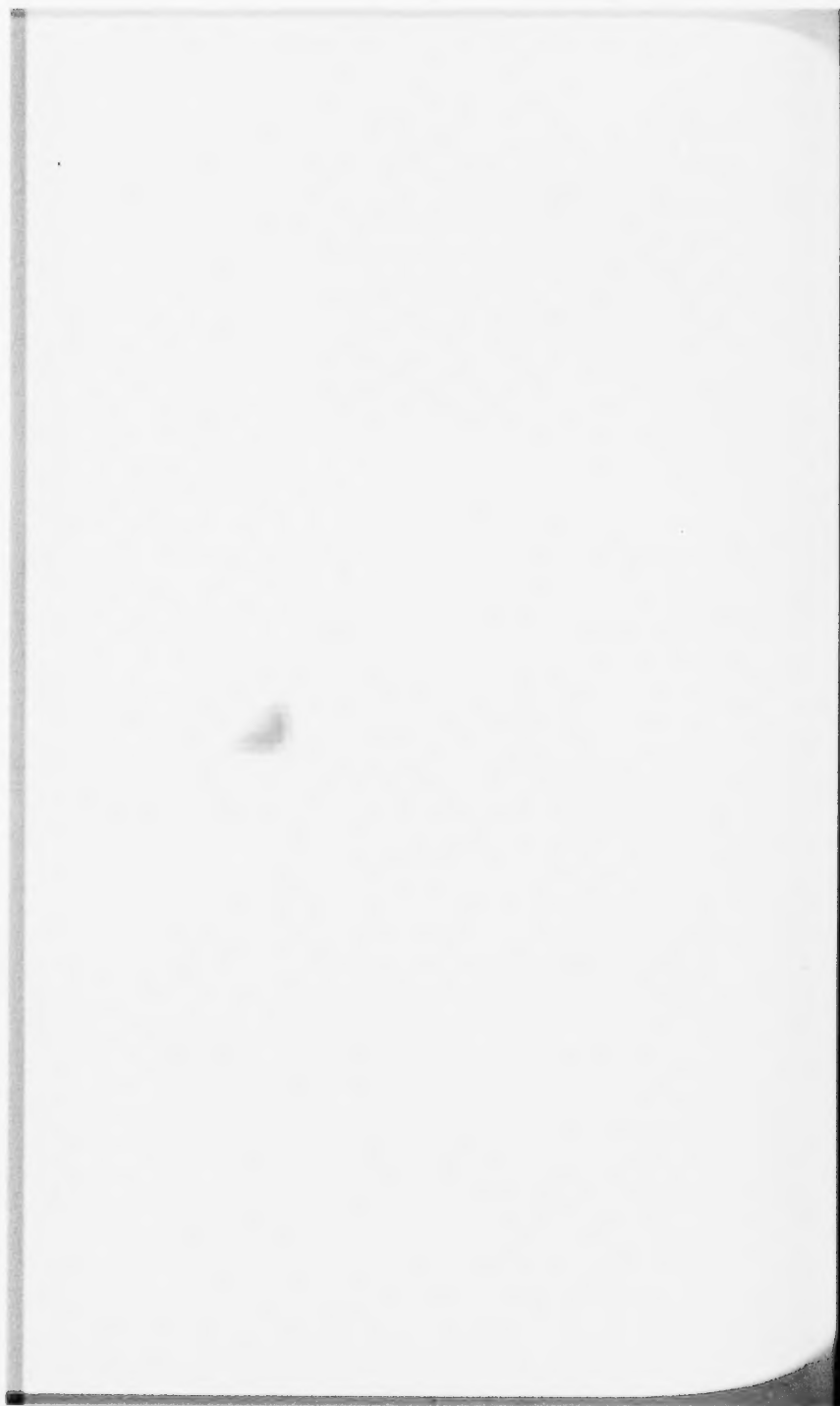
IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1944

COMMISSIONER OF INTERNAL REVENUE,  
*Petitioner,*

*v.*

ESTATE OF CAROLINE WHITE, DECEASED, WALDRON  
KINTZING POST, JOHN ROSS DELAFIELD AND BACHE  
McE. WHITLOCK, AS EXECUTORS OF THE WILL OF  
CAROLINE WHITE, DECEASED.

BRIEF IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI





IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1944  
No. 708

---

COMMISSIONER OF INTERNAL REVENUE,  
*Petitioner,*  
*v.*

Estate of CAROLINE WHITE, Deceased, WALDRON KINTZING  
POST, JOHN ROSS DELAFIELD and BACHE McE. WHITLOCK,  
as Executors of the Will of CAROLINE WHITE, Deceased.

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**BRIEF IN OPPOSITION TO PETITION FOR WRIT  
OF CERTIORARI**

The Government (the Petitioner) claims that the testatrix should have included in her gross income for 1938 and 1939 the interest that she received on bonds of Triborough Bridge Authority. The income tax law exempts "interest upon obligations of a State, Territory or any political subdivision thereof."

The question in this case is whether interest on bonds of Triborough Bridge Authority comes within this exemption. The Circuit Court of Appeals decided that such interest was within such exemption. There is no constitutional question involved unless the decision of the Circuit Court of Appeals on this point is wrong.

The history of the Government's claim is of importance in connection with its application for a writ.

Beginning with a ruling dated November 3, 1923, there have been a long series of rulings by the Bureau of Internal

Revenue holding that interest on bonds of the character of Triborough Bridge Authority bonds was exempt from income tax. While some rulings were at first adverse, these were, on reconsideration, reversed. (Volume entitled, "Exhibits", pages 5 to 84.)

In fact, the Bureau ruled on the very bonds involved in this case. The ruling by Guy T. Helvering, Commissioner of Internal Revenue, dated February 17, 1937, addressed to Robert Moses, then and still Chairman of Triborough Bridge Authority, stated:

"It is believed that the Triborough Bridge Authority is in effect an instrumentality of the City of New York, a political subdivision of the State of New York; that the bonds issued by such Authority will be, in effect, bonds of the city issued in the exercise of its borrowing power; and that interest on such bonds will, therefore, be exempt from Federal income tax."

("Exhibits", page 53; also Appendix to Petitioner's Brief, page 26.)

Not only has the Government made this long series of rulings that interest on bonds of this character is tax exempt, but until 1941, it never made any attempt to tax interest on such bonds. The first attempt to tax such interest appears to have been made on or about March 14, 1941, when deficiency notices were sent to only seven of all the holders of bonds of the New York Port Authority. This was followed by sending deficiency notices on or about July 19, 1941 to only two of all the holders of Triborough Bridge Authority bonds, one of them being the Respondents.

At the time these notices were mailed to the two holders of Triborough Bridge Authority Bonds, a press release was given out stating:

"In order to avoid putting a large class of taxpayers to unnecessary expense, the Bureau of Internal Revenue will proceed only against two of the many Triborough Bridge Authority Bondholders."

Obviously, the Government does not consider its case strong as it has been willing to let the statute of limitations run in favor of all the bondholders to whom no notices of deficiency were sent. (This press release is in "Exhibits" at page W12.)

The United States Tax Court and the Circuit Court of Appeals have decided this case against the Government on the statutory construction point, namely, holding that the bonds are exempt by statute, and neither of these Courts considered the constitutional question. Thus, both these Courts have followed the Government's own construction of the statute contained in the rulings above referred to and confirmed by its consistent and still continued practice of not attempting a general enforcement of the tax.

With this history of the position of the Government and the decisions of the Tax Court and of the Circuit Court of Appeals, the law is well established without the necessity for a decision by this Court.

There is no conflict of decisions between different Circuit Courts of Appeal.

One other point should be noted. In the press release issued by the Government as stated above at the time the deficiency notices were mailed, the following statement appears:

"Should the Supreme Court now uphold the Treasury's position, the Treasury intends to renew its recommendation to Congress (1) to abate the payment of back taxes, (2) to exempt outstanding issues from taxation, and (3) to begin the taxation of future issues.

"Assuming that Congress carries out these recommendations, no holders of Triborough Bridge Authority and similar obligations have any reason to fear the imposition of taxes on obligations now outstanding, Treasury attorneys said."

(Pet. Ex. 3 on page W12 of Volume of "Exhibits".) It seems inconsistent for the Government to attempt in this

litigation to enforce taxes which it expects to ask Congress to abate.

We refer to the Brief in Opposition to Petition for a Writ of Certiorari in the companion case, relating to the Port of New York Authority, now before this Court entitled, "*Commissioner v. Estate of Shamberg*", No. 707, for additional grounds for opposing the petition.

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It is respectfully submitted that the Commissioner's petition for a writ of certiorari should be denied.

LEWIS L. DELAFIELD, JR.,  
*Attorney for Respondents.*

December, 1944.

